

Message Text

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S E C R E T SECTION 1 OF 2 USUN 3581

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FROM LOS DEL

E.O. 11652: XGDS-1

TAGS: PFOR, PLOS

SUBJECT: SECRETARY'S MEETING WITH SELECTED DELEGATIONS ON
MARINE SCIENTIFIC RESEARCH AND THE STATUS OF THE ECONOMIC
ZONE, SEPTEMBER 1, 1976, 11:15 - 12:45

1. AT THE SUBJECT MEETING, THE SECRETARY STATED HE
WANTED TO GET A PERSONAL IMPRESSION OF WHAT OTHER DELE-
GATIONS' POSITIONS WERE AND HOW TOGETHER WE MIGHT
MOVE THESE NEGOTIATIONS FORWARD. AFTER HEARING THEIR
VIEWS, HE NOTED THAT THERE APPEAR TO BE THREE BASIC
POSITIONS.

(1) THAT THE ECONOMIC ZONE WAS HIGH SEAS EXCEPT
FOR CERTAIN ENUMERATED RIGHTS OF COASTAL STATES (THE US
POSITION);

(2) THAT THE ECONOMIC ZONE HAS ITS OWN LEGAL
CHARACTER WITH HIGH SEAS RIGHTS DEFINED WITHIN THE ZONE
WITHOUT DEFINING THE STATUS OF THE ZONE; AND

(3) THAT THE ECONOMIC ZONE IS SUI GENERIS WITH
THE QUESTION OF RESIDUAL RIGHTS RESOLVED MORE OR LESS IN
FAVOR OF THE COASTAL STATE.

HE INDICATED THAT THE UNITED STATES WAS INTERESTED IN

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HIGH SEAS RIGHTS IN THE ECONOMIC ZONE AND WAS CON-

CERNED THAT THE ECONOMIC ZONE NOT BECOME A TERRITORIAL SEA IN FACT (CREEPING JURISDICTION). HE UNDERTOOK TO CONSIDER WHAT WAS SAID REGARDING RIGHTS WITHIN THE ZONE (WHILE DOWN-PLAYING THE QUESTION OF STATUS). HE INDICATED THAT THE UNITED STATES WILL COME BACK WITH AN APPROACH TO BRIDGE THE GAP.

2. SCIENTIFIC RESEARCH. THE SECRETARY INDICATED THAT WE WILL APPROACH THE RESOLUTION OF THIS ISSUE IN A NON-DOCTRINAIRE MANNER, BUT WE CANNOT AGREE TO A PURE UNQUALIFIED CONSENT REGIME. PERHAPS CERTAIN ISSUES CAN BE GLOSSED OVER WITHOUT BEING PARTICULARLY SPECIFIC. HE AGAIN REITERATED SUPPORT FOR DISTINCTION BETWEEN RESOURCE-RELATED AND NON-RESOURCE-RELATED RESEARCH.

3. STATUS OF THE ECONOMIC ZONE.

(A) MEXICO (TELLO) MAINTAINED THAT THE EXCLUSIVE ECONOMIC ZONE WAS A RESULT OF A COMPROMISE BETWEEN THOSE WHO ADVOCATED A 200-MILE TERRITORIAL SEA ON THE ONE HAND AND THOSE WHO ADVOCATED A 12-MILE TERRITORIAL SEA PLUS A 188-MILE ZONE OF PREFERENTIAL RIGHTS FOR THE COASTAL STATE. HE RECOGNIZED THAT ARTICLE 46 REGARDING NAVIGATION AND COMMUNICATION FOR THE MARITIME POWERS MAY NOT BE SATISFACTORY AND THAT THEY WERE PREPARED TO SEE AMENDMENTS TO THAT ARTICLE.

(B) NORWAY (VINDENES) INDICATED THAT THE STATUS OF THE ZONE IS NOT AS IMPORTANT AS ONE GETS FROM THE DISCUSSIONS. IN THEIR VIEW, THE ZONE IS SUI GENERIS AND THAT THE RIGHTS OF THE COASTAL STATE AND THE QUESTION OF RESIDUAL RIGHTS ARE OF GREATER SIGNIFICANCE AND SHOULD BE DEALT WITH IN THE TREATY IN ORDER TO AVOID THE EVOLUTION OF THE ZONE INTO A TERRITORIAL SEA. ONE SHOULD LOOK TO ARTICLE 47 WHICH DEALS WITH FUTURE CONFLICTS. THAT ARTICLE LEAVES THE QUESTION OPEN TO FUTURE CONCILIATION ON THE BASIS OF EQUITY AND DOES NOT ASSURE IN ADVANCE THAT IT WOULD WORK TO THE ADVANTAGE OF ONE GROUP OR

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THE OTHER. THE SECRETARY INDICATED THAT THIS EXPLANATION MAKES IT APPARENT THAT CONSTANT DISPUTES WOULD RESULT CONCERNING THE RIGHTS OF THE MAIN MARITIME USERS.

(C) SINGAPORE (KOH) COULD AGREE THAT THE ZONE IS NOT PART OF THE HIGH SEAS OR THE TERRITORIAL SEA. THE QUESTION IN HIS MIND WAS WHO HAS RESIDUAL

RIGHTS. ARTICLE 47 LEAVES THE ISSUE OPEN BUT IN THEIR VIEW, RESIDUAL RIGHTS SHOULD LIE WITH THE INTERNATIONAL COMMUNITY TO THE EXTENT THAT THEY ARE NOT INCOMPATIBLE WITH EXPLICIT COASTAL STATE RIGHTS IN THE EXCLUSIVE ECONOMIC ZONE.

(D) CANADA (BEESLEY) FOCUSSED ON THE QUESTION OF CREEPING JURISDICTION BY COASTAL STATES. HE WOULD DISTINGUISH BETWEEN RESIDUAL RIGHTS REGARDING PRE-EXISTING USES OF THE SEAS AND NEW USES OF THE SEA. THE DEBATES HAVE FOCUSSED ON PRE-EXISTING USES. THE RSNT GIVES RISE TO THE FEARS THE US RAISED. HE REMARKED THAT THE US HAD ATTACKED HEAD ON ARTICLE 75 WHILE THE GREAT MAJORITY OF NATIONS FOUND THE HIGH SEAS STATUS OF THE ZONE UNACCEPTABLE. THAT INCLUDES CANADA. HE SUGGESTED THAT WE LOOK AT ARTICLES 44 AND 46 AND POSSIBLE INCLUDE THE HIGH SEAS FREEDOMS OF NAVIGATION, OVERFLIGHT, ETC. IN THE LATTER ARTICLE. PERHAPS THE COASTAL STATE WOULD HAVE NO JURISDICTION OTHER THAN THAT SPELLED OUT. HE BELIEVED THAT IT WAS IDLE TO MODIFY ARTICLE 75.

(E) PERU (BAKULA AND ARIAS SCHREIBER) SAID THAT JURIDICALLY THE ECONOMIC ZONE IS NOT HIGH SEAS BUT THAT THEY ARE WILLING TO ATTRIBUTE CERTAIN HIGH SEAS FREEDOMS TO THE INTERNATIONAL COMMUNITY IN THE ZONE. WHILE THEY DID NOT EXCLUDE MILITARY USES THEY MAINTAINED THAT THE FLAG STATE MUST REFRAIN FROM CERTAIN ACTIVITIES PREJUDICIAL TO THE COASTAL STATE AND THAT OTHER STATES SHOULD BEHAVE PEACEFULLY. THE SECRETARY RHETORICALLY ASKED HOW AN AIRCRAFT CARRIER COULD NOT MENACE A COASTAL STATE AND WHO DETERMINES WHETHER THE ACTIVITY IS PEACEFUL OR NOT. SOME STATES
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HAVE A LOW THRESHOLD OF ANXIETY.

(F) NEW ZEALAND (TEMPLETON) NOTED THAT THE CONVENTION RECOGNIZES THAT THE OCEANS BE USED FOR PEACEFUL PURPOSES.

(G) SINGAPORE (KOH) REMARKED THAT MILITARY TRAINING ACTIVITIES ARE A LACUNA IN THE TEXT. HE SAID ALL RIGHTS SHOULD BE PRESERVED FOR THE INTERNATIONAL COMMUNITY EXCEPT THOSE GIVEN TO THE COASTAL STATE.

(H) FRG (KNOKE) HAS GREAT DIFFICULTY WITH THE CONCEPT OF THE ECONOMIC ZONE AND SUPPORTS ITS HIGH SEAS STATUS TO THE EXTENT THAT IT IS NOT INCOMPATIBLE WITH THE CHAPTER ON THE ECONOMIC ZONE. HE SAW PROBLEMS OF

CREEPING JURISDICTION AND THE CONSEQUENT NEED FOR THE SETTLEMENT OF DISPUTES.

(I) KENYA (NJENGA) REAMRKED THAT THE ECONOMIC ZONE WAS A FUNDAMENTALLY NEW CONCEPT. THE REASON IS NOT PURELY ONE OF RESOURCE RIGHTS LEAVING ALL ELSE TO PRE-EXISTING LAW. NONE OF THE EXISTING FREEDOMS OF THE HIGH SEAS WILL REMAIN THE SAME AS ALL WILL IMPINGE ON COASTAL STATE RIGHTS. IT WILL NOT BE FEASIBLE FOR THE COASTAL STATE IN THE FUTURE TO PERMIT EXTENSIVE NAVAL MENEUVERS AND WEAPONS TESTING. THE SECRETARY STATED THAT THIS WAS A PERFECT DESCRIPTION OF OUR MAJOR CONCERNS.

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FROM LOS DEL

(J) SENEGAL (CISSE) AGREED THAT THE ZONE WAS NEITHER HIGH SEAS OR TERRITORIAL SEA AND WAS READY TO LAEVE ALL THOSE RIGHTS NOT RELATED TO RE-SOURCES IN THE INTERNATIONAL COMMUNITY.

(K) AUSTRALIA (BRENNAN) STATED THAT THE ALTERNATIVE TO A TREATY IS CHAOS, BECAUSE OF UNILATERAL ACTIONS BY A VAST NUMBER OF STATES (INCLUDING COASTAL STATE CLAIMS BEYOND THE CONTINENTAL MARGIN TO THE DEEP SEABED). THE PRIMARY OBJECTIVE OF THIS CONFERENCE IS A WORKABLE CONVENTION THAT ATTRACTS ALL GROUPS OF STATES WHOSE COOPERATION IS NECESSARY FOR ITS OPERATION. THEIR AMENDMENT TO ARTICLE 75 OF

THE LAST SESSION, TO WIT, THE ECONOMIC ZONE IS HIGH SEAS FOR CERTAIN PURPOSES AND NOT FOR OTHERS, IS NOT ACCEPTABLE TO MOST STATES AND THEY ARE NOT PURSUING IT FURTHER. THE ONLY STARTING POINT FOR NEGOTIATIONS WAS THAT THE ECONOMIC ZONE WAS SUI GENERIS. HE EXPRESSED THE CONCERN THAT IF EXCESSIVE RIGHTS ARE GIVEN TO THE LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES IN THE ZONE OR IF COMPULSORY DISPUTE SETTLEMENT IS NOT VERY CAREFULLY WORKED OUT OR IF RESIDUAL RIGHTS ARE NOT SATISFACTORILY RESOLVED THE ECONOMIC ZONE COULD BE DISMANTLED.

(1) BRAZIL (GUERREIRO) THOUGHT THAT THE
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ECONOMIC ZONE WAS A COMPROMISE AND BRAZIL WOULD TRY TO PROTECT THE NECESSARY INTERESTS IN IT.

(M) NETHERLANDS (KOOIJMANS) STRESSED THE NEED FOR COMPREHENSIVE DISPUTE SETTLEMENT APPLICABLE IN THE ZONE. THE SECRETARY INDICATED THAT CDS CUTS BOTH WAYS AND COULD LEAD TO AN EXPANSION OF THE TERRITORIAL SEA IN FACT OR TO AN EXPANSION OF HIGH SEAS RIGHTS IN THE ZONE.

(N) BULGARIA (YANKOV) STRESSED THE NEED TO DEFINE RIGHTS AND DUTIES IN THE ZONE RATHER THAN FOCUS ON ITS STATUS.

4. SCIENTIFIC RESEARCH.

(A) BULGARIA (YANKOV) DEFENDED THE RSNT ON SCIENTIFIC RESEARCH AND STRESSED THE DIFFICULTY OF DISTINGUISHING BETWEEN RESOURCE AND NON-RESOURCE-RELATED RESEARCH. HE SUGGESTED THAT IT IS IN THE INTEREST OF THE COASTAL STATE TO ENCOURAGE RESEARCH AND THAT IT SHOULD NORMALLY GRANT CONSENT WHICH SHOULD NOT BE UNREASONABLY DELAYED. IF THE RESEARCHER GIVES SUFFICIENT EVIDENCE THAT THE RESEARCH IS NOT RESOURCE ORIENTED, THE COASTAL STATE SHOULD NOT WITHHOLD CONSENT. THIS HE THOUGHT WAS A VIABLE COMPROMISE. HE UNDERSTOOD THE US' CONSIDERABLE APPREHENSION REGARDING CONSENT.

(B) CANADA (BEESLEY) DID NOT FIND THE RSNT ON RESEARCH SATISFACTORY BUT WOULD ACCEPT IT AS A POLITICAL DECISION WHICH PROTECTED THE INTERESTS OF THE COASTAL STATE. IN THE RESPONSE TO THE SECRETARY'S QUERY, "WHY WON'T THE COASTAL STATE SAY THAT ALL SCIENTIFIC RESEARCH IS RESOURCE ORIENTED?",

BEESEY SAID THAT IS THE PROBLEM BUT THAT THE TEXT WAS A BALANCE.

(C) FRG (KNOKE) THOUGHT THAT PUTTING THE BURDEN OF PROOF ON THE RESEARCHING STATE WOULD TURN THE ECONOMIC ZONE INTO A ZONE OF SECRET

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TERRITORIAL SOVEREIGNTY.

(D) AUSTRALIA (BRENNAN) THOUGHT THAT IN PRACTICE THE COASTAL STATE WOULD MAKE PRAGMATIC DECISIONS AND THAT ALL RESEARCH WOULD NOT BE STOPPED, BUT IF THE COASTAL STATE WANTS TO STOP A PROJECT ITS VIEWS WILL PREVAIL. THE SECRETARY OPINED THAT IT WOULD BE ABSURD FOR THE CONFERENCE TO FAIL ON THIS ISSUE.

(E) PERU (ARIAS SCHREIBER) SAID THAT CONSENT FOR RESEARCH WITHIN 200 MILES HAD BEEN REQUIRED FOR THE LAST 30 YEARS AND THAT THEY HAD NOT REFUSED RESEARCH REQUESTS. ONLY RELUCTANTLY COULD THEY ACCEPT YANKOV'S TEXT AS THE RESEARCHING STATE HAS ALL THE MEANS TO PROVE THAT THE RESEARCH IS NOT RESOURCE RELATED.

(F) KENYA (MBOTE) SAID THAT THE LDCEES NEED SCIENTIFIC RESEARCH AND HAVE NO INTEREST IN HINDERING IT. THEY ARE CONCERNED ABOUT RESEARCH BEING CONDUCTED WITHOUT THEIR KNOWLEDGE. THEY THOUGHT THAT THE DISTINCTION APPROACH IS NOT VIABLE BUT COULD NEGOTIATE ON THE BASIS OF THE PRESENT TEXT.

(G) NETHERLANDS (KOOIJMANS) STRESSED THE NEEDS FOR GUARANTEES THAT RESEARCH COULD BE CARRIED OUT, TIED THIS TO THE STATUS OF THE ECONOMIC ZONE, AND STRESSED THE NEED FOR COMPULSORY DISPUTE SETTLEMENT.

5. THE SECRETARY WAS CONCERNED THAT REFERENCE TO THE COASTAL STATE NOT "NORMALLY" WITHHOLDING ITS CONSENT INCREASES HIS FEARS AND THAT YANKOV'S TEXT COMPROMISE OF THIS SESSION IS MUCH MORE DIFFICULT THAN THE RSNT. HE STATED THAT IT WAS IMPOSSIBLE TO ACHIEVE RATIFICATION IF THE RESEARCH COMMUNITY OPPOSED IT. HE STRESSED THE NECESSITY OF LIMITING CATEGORIES FOR CONSENT. HE STATED THAT THE NOTIFICATION, PARTICIPATION, AND DATA SHARING REQUIREMENTS SHOULD REASSURE THE COASTAL STATES. HE FURTHER STATED THAT THE US WILL DO ITS BEST TO DEAL WITH THIS ISSUE IN A NON-DOCTRINAIRE MANNER BUT THAT WE CANNOT SECRET

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AGREE TO A PURE UNQUALIFIED CONSENT REGIME. PERHAPS
A SOLUTION WHICH BLURRED SOME OF THE ISSUES MIGHT POINT
THE WAY OUT OF THIS IMPASSE.
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